

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT RIVERA,

Plaintiff,

v.

DONALD K. MCCLELLAN, et al.,

Defendants.

ORDER

08-CV-6505L

Plaintiff Robert Rivera (“Rivera”) in the above-captioned matter has filed an action pursuant to 42 U.S.C. § 1983 alleging that defendants violated his constitutional rights while he was an inmate at Attica Correctional Facility. (Docket # 1). Currently pending before this Court is Rivera’s motion for sanctions against defendants for failure to respond to his discovery requests. (Docket ## 22, 23).

On September 28, 2009, Rivera served document requests and interrogatories on defendants (Docket # 20) and defendants refused to respond to them on the basis that the discovery requests were premature because the Court had not yet held a Rule 16(b) scheduling conference. (See letter from defendants’ counsel to Court dated October 23, 2009). On November 12, 2009, after holding a scheduling conference with the parties, this Court issued a scheduling order requiring defendants to respond to Rivera’s outstanding discovery requests by no later than December 29, 2009. (Docket # 24).

Rule 26(d) of the Federal Rules of Civil Procedure provides that parties may not seek discovery from one another until the parties have established a discovery plan, except in

proceedings brought by *pro se* litigants “in the custody of the United States,” which are exempt from that requirement. Fed. R. Civ. P. 26(a), (d). Thus, Rivera’s document requests were timely served in accordance with the Federal Rules. Nevertheless, because defendants have now been ordered by this Court to respond to Rivera’s requests and Rivera has made no showing of prejudice by defendants’ failure to respond before the scheduling conference, his motions for sanctions (**Docket ## 22, 23**) are **DENIED as MOOT**.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
November 23, 2009